

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KENWORTH STERKEL,

Plaintiff,

No. 2:16-CV-00390-RHW

V.

NANCY A. BERRYHILL  
(PREVIOUSLY CAROLYN W.  
COLVIN),  
Acting Commissioner of Social  
Security,<sup>1</sup>

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Defendant.

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 13 & 14. Mr. Sterkel brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's final decision, which denied his application for Disability Insurance Benefits under Title II and his application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C §§ 401-434, 1381-1383F. After reviewing the administrative record and

<sup>1</sup> Nancy A. Berryhill became the Acting Commissioner of Social Security on January 20, 2017. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Carolyn W. Colvin as the defendant in this suit. No further action need be taken to continue this suit. 42 U.S.C. § 405(g).

1 briefs filed by the parties, the Court is now fully informed. For the reasons set forth  
2 below, the Court **GRANTS** Defendant's Motion for Summary Judgment and  
3 **DENIES** Mr. Sterkel's Motion for Summary Judgment.

4 **I. Jurisdiction**

5 Mr. Sterkel filed his application for Disability Insurance Benefits on March  
6 3, 2013, and his application for Supplemental Security Income on July 23, 2013.  
7 AR 13, 211-217, 218-223. His alleged onset date is June 1, 2008, AR 13, 211, 218.  
8 Mr. Sterkel's applications were initially denied on May 7, 2013, AR 131-33, and  
9 on reconsideration on July 17, 2013, AR 135-36.

10 A hearing with Administrative Law Judge ("ALJ") Jesse Shumway occurred  
11 on April 17, 2015, AR 37-93. On May 13, 2015, the ALJ issued a decision finding  
12 Mr. Sterkel ineligible for disability benefits. AR 10-25. The Appeals Council  
13 denied Mr. Sterkel's request for review on September 30, 2016, AR 1-4, making  
14 the ALJ's ruling the "final decision" of the Commissioner.

15 Mr. Sterkel timely filed the present action challenging the denial of benefits,  
16 on November 2, 2016. ECF No. 3. Accordingly, Mr. Sterkel's claims are properly  
17 before this Court pursuant to 42 U.S.C. § 405(g).

18 **II. Sequential Evaluation Process**

19 The Social Security Act defines disability as the "inability to engage in any  
20 substantial gainful activity by reason of any medically determinable physical or

1 mental impairment which can be expected to result in death or which has lasted or  
2 can be expected to last for a continuous period of not less than twelve months.” 42  
3 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be  
4 under a disability only if the claimant’s impairments are of such severity that the  
5 claimant is not only unable to do his previous work, but cannot, considering  
6 claimant’s age, education, and work experience, engage in any other substantial  
7 gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) &  
8 1382c(a)(3)(B).

9 The Commissioner has established a five-step sequential evaluation process  
10 for determining whether a claimant is disabled within the meaning of the Social  
11 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*  
12 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

13 Step one inquires whether the claimant is presently engaged in “substantial  
14 gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful  
15 activity is defined as significant physical or mental activities done or usually done  
16 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in  
17 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§  
18 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

19 Step two asks whether the claimant has a severe impairment, or combination  
20 of impairments, that significantly limits the claimant’s physical or mental ability to

1 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe  
2 impairment is one that has lasted or is expected to last for at least twelve months,  
3 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &  
4 416.908-09. If the claimant does not have a severe impairment, or combination of  
5 impairments, the disability claim is denied, and no further evaluative steps are  
6 required. Otherwise, the evaluation proceeds to the third step.

7       Step three involves a determination of whether any of the claimant's severe  
8 impairments "meets or equals" one of the listed impairments acknowledged by the  
9 Commissioner to be sufficiently severe as to preclude substantial gainful activity.  
10 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;  
11 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or  
12 equals one of the listed impairments, the claimant is *per se* disabled and qualifies  
13 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to the  
14 fourth step.

15       Step four examines whether the claimant's residual functional capacity  
16 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f) &  
17 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant is  
18 not entitled to disability benefits and the inquiry ends. *Id.*

19       Step five shifts the burden to the Commissioner to prove that the claimant is  
20 able to perform other work in the national economy, taking into account the

1 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),  
2 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this  
3 burden, the Commissioner must establish that (1) the claimant is capable of  
4 performing other work; and (2) such work exists in "significant numbers in the  
5 national economy." 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,  
6 676 F.3d 1203, 1206 (9th Cir. 2012).

7 **III. Standard of Review**

8 A district court's review of a final decision of the Commissioner is governed  
9 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the  
10 Commissioner's decision will be disturbed "only if it is not supported by  
11 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1144,  
12 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means "more than a  
13 mere scintilla but less than a preponderance; it is such relevant evidence as a  
14 reasonable mind might accept as adequate to support a conclusion." *Sandgathe v.*  
15 *Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (quoting *Andrews v. Shalala*, 53 F.3d  
16 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining  
17 whether the Commissioner's findings are supported by substantial evidence, "a  
18 reviewing court must consider the entire record as a whole and may not affirm  
19 simply by isolating a specific quantum of supporting evidence." *Robbins v. Soc.*  
20

*Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989)).

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992). If the evidence in the record “is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9<sup>th</sup> Cir. 2002) (if the “evidence is susceptible to more than one rational interpretation, one of which supports the ALJ's decision, the conclusion must be upheld”). Moreover, a district court “may not reverse an ALJ's decision on account of an error that is harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115. The burden of showing that an error is harmful generally falls upon the party appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

#### **IV. Statement of Facts**

The facts of the case are set forth in detail in the transcript of proceedings, and only briefly summarized here. Mr. Sterkel was 23 years old at the alleged date of onset. AR 23, 95, 103, 211, 218. He has at least a high school education. AR 23, 265, 432. Mr. Sterkel is able to communicate in English. AR 23. He has a history

1 of substance addiction stemming primarily from cannabis and alcohol abuse. AR  
2 21, 22, 107-08, 112, 120-21, 125-26, 432, 434. Mr. Sterkel previously worked as a  
3 team leader, product specialist, laborer, and deli associate. AR 23, 111, 125, 265,  
4 279.

5 **V. The ALJ's Findings**

6 The ALJ determined that Mr. Sterkel was not under a disability within the  
7 meaning of the Act from June 1, 2008, his alleged date of onset. AR 24.

8 **At step one**, the ALJ found that Mr. Sterkel had not engaged in substantial  
9 gainful activity since June 1, 2008 (citing 20 C.F.R. §§ 404.1571 et seq. & 416.971  
10 et seq.). AR 15.

11 **At step two**, the ALJ found Mr. Sterkel had the following severe  
12 impairments: general anxiety disorder with separation anxiety, degenerative disc  
13 disease, degenerative arthritis, asthma, bipolar, depression, and personality  
14 disorder (citing 20 C.F.R. §§ 404.1520(c) & 416.920(c)). AR 15.

15 **At step three**, the ALJ found that Mr. Sterkel did not have an impairment or  
16 combination of impairments that meets or medically equals the severity of one of  
17 the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 15-16.

18 **At step four**, the ALJ found Mr. Sterkel had the residual functional capacity  
19 to perform a full range of light work with these limitations: (1) he can only  
20 occasionally climb stairs and ladders; (2) he can only occasionally stoop and

1 crouch; (3) he can frequently perform all other postural activities; (4) he can have  
2 no concentrated exposure to cold, vibration, pulmonary irritants, and hazards; (5)  
3 he is limited to simple, routine, repetitive tasks with a reasoning level of three or  
4 less; and (6) he can have only superficial interaction with the public, coworkers,  
5 and supervisors. AR 17.

6 The ALJ determined that Mr. Sterkel is unable to perform any past relevant  
7 work. AR 23.

8 At step five, the ALJ found that, in light of his age, education, work  
9 experience, and residual functional capacity, in conjunction with the Medical-  
10 Vocational Guidelines, there are jobs that exist in significant numbers in the  
11 national economy that he can perform. AR 24.

## 12 VI. Issues for Review

13 Mr. Sterkel argues that the Commissioner's decision is not free of legal error  
14 and not supported by substantial evidence. Specifically, he argues the ALJ erred  
15 by: (1) improperly assessing Mr. Sterkel's subjective complaint testimony  
16 credibility; (2) improperly weighing the opinion evidence about Mr. Sterkel's  
17 mental impairments; and (3) improperly assessing Mr. Sterkel's residual  
18 functioning capacity, and failing to identify jobs, available in significant numbers,  
19 that Mr. Sterkel could perform despite his functional limitations.

## VII. Discussion

## A. The ALJ Properly Discounted Mr. Sterkel's Credibility.

An ALJ engages in a two-step analysis to determine whether a claimant’s testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective medical evidence of an underlying impairment or impairments that could reasonably be expected to produce some degree of the symptoms alleged. *Id.* Second, if the claimant meets this threshold, and there is no affirmative evidence suggesting malingering, “the ALJ can reject the claimant’s testimony about the severity of [her] symptoms only by offering specific, clear, and convincing reasons for doing so.” *Id.*

In weighing a claimant's credibility, the ALJ may consider many factors, including, "(1) ordinary techniques of credibility evaluation, such as the claimant's reputation for lying, prior inconsistent statements concerning the symptoms, and other testimony by the claimant that appears less than candid; (2) unexplained or inadequately explained failure to seek treatment or to follow a prescribed course of treatment; and (3) the claimant's daily activities." *Smolen*, 80 F.3d at 1284. When evidence reasonably supports either confirming or reversing the ALJ's decision, the Court may not substitute its judgment for that of the ALJ. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.1999). Here, the ALJ found that the medically

1 determinable impairments could reasonably be expected to produce the symptoms  
2 Mr. Sterkel alleges; however, the ALJ determined that Mr. Sterkel's statements  
3 regarding intensity, persistence, and limiting effects of the symptoms were not  
4 entirely credible. AR 18.

5 The ALJ noted several activities of daily living that are inconsistent with Mr.  
6 Sterkel's allegations. Activities inconsistent with the alleged symptoms are proper  
7 grounds for questioning the credibility of an individual's subjective allegations.

8 *Molina*, 674 F.3d at 1113 ("[e]ven where those activities suggest some difficulty  
9 functioning, they may be grounds for discrediting the claimant's testimony to the  
10 extent that they contradict claims of a totally debilitating impairment"); *see also*  
11 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Orn v. Astrue*, 495 F.3d  
12 625, 639 (9th Cir. 2007) (the Ninth Circuit has recognized that daily activities  
13 transferable to a work setting or contradictory to other testimony as grounds for  
14 adverse credibility determination).

15 Mr. Sterkel alleges total disability due to his physical and mental limitations  
16 rendering him unable to function in or outside his home. AR 18, 20. However, the  
17 ALJ identified several of Mr. Sterkel's activities of daily living that are  
18 inconsistent with his allegation of total physical and mental disability. In particular,  
19 the ALJ noted he exercises regularly and extensively every day for an hour or  
20 more, he prepares his own meals, he drives, he spends three hours a day on the

1 computer, he is the primary care provider for his kids, he is homeschooling his  
2 kids, and he takes his children to the park. AR 19, 20, 56, 64-65, 67, 69, 98, 106,  
3 272-73, 275-76, 432. In addition, the ALJ determined Mr. Sterkel's subjective  
4 complaints were not entirely credible based on the ALJ's observations that Mr.  
5 Sterkel sat through a one-hour hearing without exhibiting any pain behavior or  
6 mental distress. AR 18, 20-21. *See Morgan v. Comm'r of the Soc. Sec. Admin.*, 169  
7 F.3d 595, 600 (9th Cir. 1999) (ALJ's personal observations of a claimant can  
8 contribute to the evidence that an ALJ considers, in part, as a factor in determining  
9 credibility).

10 Additionally, in consideration of Mr. Sterkel's credibility, the ALJ noted the  
11 lack of mental health treatment sought by Mr. Sterkel. AR 20. A claimant's  
12 statements may be less credible when treatment is inconsistent with the level of  
13 complaints or a claimant is not following treatment prescribed without good  
14 reason. *Molina*, 674 F.3d at 1114; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
15 1989) ("Unexplained, or inadequately explained, failure to seek treatment . . . can  
16 cast doubt on the sincerity of [a] claimant's pain testimony."). The record also  
17 demonstrates that Mr. Sterkel is not following his prescribed medication treatment.  
18 AR 120, 122, 480. The ALJ also discounted Mr. Sterkel's credibility and  
19 subjective complaint testimony because Mr. Sterkel quit work because he wanted  
20 to stay at home with his first child, and he did not suffer from a disabling condition

1 at that time. AR 20, 78-79, 432. The fact that a claimant stopped work for reasons  
2 other than their impairments is a sufficient basis to discredit testimony. *Bruton v.*  
3 *Massanari*, 268 F.3d 824, 828 (9th Cir. 2001).

4 The Court does not find the ALJ erred when assessing Mr. Sterkel's  
5 credibility because Mr. Sterkel's activities reflect a level of functioning that is  
6 inconsistent with his claims of disability, as well as observations made by the ALJ  
7 at the hearing, and a failure to treat his alleged mental impairments.

8 **B. The ALJ Properly Weighed the Opinion Evidence.**

9 **a. The ALJ properly considered the opinion evidence of Ray**  
10 **William Smith, Ed.D.**

11 The opinion testimony of Ray William Smith, a licensed mental health  
12 counselor with a doctorate of education<sup>2</sup>, falls under the category of "other  
13 sources." "Other sources" for opinions include nurse practitioners, physicians'  
14 assistants, therapists, counselors, welfare agency personnel, teachers, social  
15 workers, spouses, and other non-medical sources. 20 C.F.R. §§ 404.1513(d),  
16 416.913(d). An ALJ is required to "consider observations by non-medical sources  
17 as to how an impairment affects a claimant's ability to work." *Sprague v. Bowen*,  
18 812 F.2d 1226, 1232 (9th Cir.1987). Non-medical testimony can never establish a  
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<sup>2</sup> While Dr. Smith, Ed.D. does have a doctorate of education and is a licensed mental health counselor, he is not an "acceptable medical source" as defined in 20 C.F.R. §§ 404.1513(a), 416.913(a) as a licensed physician, licensed or certified psychologists, licensed optometrists, licensed podiatrists, and qualified speech-language pathologists; thus Dr. Smith is considered an "other source" as defined in 20 C.F.R. §§ 404.1513(d), 416.913(d).

1 diagnosis or disability absent corroborating competent medical evidence. *Nguyen*  
2 *v. Chater*, 100 F.3d 1462, 1467 (9th Cir.1996). An ALJ is obligated to give reasons  
3 germane to “other source” testimony before discounting it. *Dodrill v. Shalala*, 12  
4 F.3d 915 (9th Cir.1993).

5 If the evidence in the record “is susceptible to more than one rational  
6 interpretation, [the court] must uphold the ALJ's findings if they are supported by  
7 inferences reasonably drawn from the record.” *Molina*, 674 F.3d at 1111.

8 Dr. Smith examined Mr. Sterkel and completed a mental residual functional  
9 capacity statement on April 13, 2015. AR 514-517. The ALJ did not completely  
10 discount or reject Dr. Smith’s opinion, but afforded the opinion partial weight in  
11 assessing the severity of Mr. Sterkel’s impairments. AR 22. The ALJ supported the  
12 decision to afford Dr. Smith’s opinion partial weight with multiple germane  
13 reasons for doing so.

14 The ALJ stated that Dr. Smith’s findings were “so sensational as to be  
15 unbelievable” and noted that the findings are not duplicated by the findings of any  
16 psychological examiner or reviewer. AR 22-23. Indeed, Dr. Smith’s findings are  
17 contradicted by the findings of Amy L. Dowell, M.D., Thomas Clifford, Ph.D., and  
18 Deanna Armstrong, M.D. AR 21, 22, 121-22, 434-35, 492. An ALJ may reject  
19 even a doctor’s opinion that is “so extreme as to be implausible” and are not  
20

1 supported by any findings made by any other doctor. *See Rollins v. Massanari*, 261  
2 F.3d 853, 856 (9th Cir. 2001).

3 Additionally, in assigning partial weight to Dr. Smith's opinion, the ALJ  
4 noted that contrary to Dr. Smith's opinion, Mr. Sterkel is not as severely limited as  
5 opined. AR 23. Demonstrated by Mr. Sterkel's actual high-functioning activities of  
6 daily living, including being the primary care provider for his children. *Id.* An ALJ  
7 may properly reject an opinion that provides restrictions that appear inconsistent  
8 with the claimant's level of activity. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th  
9 Cir. 2001). Furthermore, the ALJ assigned only partial weight to Dr. Smith's  
10 opinion because the visits were described as being primarily "venting sessions"  
11 and because it appears the opinion is heavily based on Mr. Sterkel's self-reported  
12 symptoms, which the ALJ properly determined were not credible. AR 23, 56. An  
13 ALJ may discount even a treating provider's opinion if it is based largely on the  
14 claimant's self-reports and not on clinical evidence, and the ALJ finds the claimant  
15 not credible. *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014).

16 The ALJ properly provided germane reasons for assigning partial weight to  
17 the opinion of Dr. Smith, and supported the determination with specific and  
18 legitimate reasons supported by substantial evidence in the record. Thus, the ALJ  
19 did not err in the consideration of Dr. Smith's opinion.

**b. The ALJ properly weighed the medical opinion evidence of Drs. Dowell, Armstrong, and Clifford.**

The Ninth Circuit has distinguished between three classes of medical providers in defining the weight to be given to their opinions: (1) treating providers, those who actually treat the claimant; (2) examining providers, those who examine but do not treat the claimant; and (3) non-examining providers, those who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (as amended).

A treating provider's opinion is given the most weight, followed by an examining provider, and finally a non-examining provider. *Id.* at 830-31. In the absence of a contrary opinion, a treating or examining provider's opinion may not be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a treating or examining provider's opinion is contradicted, it may only be discounted for "specific and legitimate reasons that are supported by substantial evidence in the record." *Id.* at 830-31.

The ALJ may meet the specific and legitimate standard by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating provider’s opinion on a psychological impairment, the ALJ must offer more than

1 his or her own conclusions and explain why he or she, as opposed to the provider,  
2 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

3 **1. Dr. Amy Dowell, M.D.**

4 On April 20, 2013, Dr. Dowell examined Mr. Sterkel and provided an  
5 opinion regarding his mental limitations. AR 21, 105, 118, 431-35. Dr. Dowell  
6 rated Mr. Sterkel's global assessment of functioning at 70, reflecting only mild  
7 symptoms, which assessment is higher than the ratings provided by Dr. Smith (35)  
8 and Dr. Armstrong (50). AR 21, 22, 434, 492, 517.

9 While the ALJ did not completely discount Dr. Dowell's opinion, it was  
10 afforded partial weight. AR 21. The ALJ noted that Dr. Dowell is an examining  
11 physician who provided a medical opinion regarding Mr. Sterkel's limitations, but  
12 that Dr. Dowell's opinion is not consistent with the record as a whole, specifically  
13 it is at odds with the opinion provided by Dr. Smith. AR 21. An ALJ may reject a  
14 doctor's opinion when it is inconsistent with other evidence in the record. *See*  
15 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 602-603 (9th Cir. 1999).

16 Mr. Sterkel briefly contends that this opinion should have been rejected  
17 completely. However, Mr. Sterkel's disagreement with the weighing of the  
18 evidence does not establish error. It is the ALJ, and not the claimant, who is  
19 responsible for weighing the evidence for probity and credibility. *See Sample v.*  
20 *Schweiker*, 694 F.2d 639, 643 (9th Cir. 1982). When the ALJ presents a reasonable

1 interpretation that is supported by the evidence, it is not the role of the courts to  
2 second-guess it. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The  
3 Court “must uphold the ALJ’s findings if they are supported by inferences  
4 reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th  
5 Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9<sup>th</sup> Cir. 2002) (if the  
6 “evidence is susceptible to more than one rational interpretation, one of which  
7 supports the ALJ’s decision, the conclusion must be upheld”).

8 The opinion of Dr. Dowell is that of a medical provider given after an  
9 examination of Mr. Sterkel. The opinion is somewhat contradicted by Dr.  
10 Armstrong, and is contradicted by the opinion of non-medical provider Dr. Smith.  
11 In assigning partial weight to Dr. Dowell’s opinion, the ALJ supported the  
12 determination with specific and legitimate reasons supported by substantial  
13 evidence in the record. Thus, the ALJ did not err in the consideration of Dr.  
14 Dowell’s opinion.

15 **2. Dr. Deanna Armstrong, M.D. and Dr. Thomas Clifford, Ph.D.**

16 Examining doctor, Dr. Armstrong, conducted an outpatient intake  
17 assessment of Mr. Sterkel, in which she rated his global assessment of functioning  
18 score at 50, which assessment is in between the ratings provided by Dr. Smith (35)  
19 and Dr. Dowell (70). AR 21, 22, 434, 492, 517. The ALJ assigned only partial  
20 weight to Dr. Armstrong’s opinion because the score of 50 is not supported with an

1 explanation, and while the score of 50 reasonably approximates Mr. Sterkel's  
2 functioning, it cannot be given great weight due to the lack of explanation. AR 22,  
3 492. Even a treating physician's opinion on a matter may be entitled to little weight  
4 when there is no support for that opinion. *See Holohan v. Massanari*, 246 F.3d  
5 1195, 1202-1203, n.2 (9th Cir. 2001).

6 Non-examining State agency psychological consultant, Dr. Clifford,  
7 reviewed the record available to him and opined that Mr. Sterkel had non-severe  
8 anxiety, affect disorder, and substance addiction, and assigned a global functioning  
9 assessment of 70. AR 22, 115-22. The ALJ assigned only partial weight to the  
10 opinion of Dr. Clifford because it is not consistent with the record as a whole and  
11 later submitted evidence after the reconsideration decision demonstrates severe  
12 psychological impairment. An ALJ may reject a doctor's opinion when it is  
13 inconsistent with other evidence in the record. *See Morgan*, 169 F.3d 595, 602-  
14 603. Additionally, an ALJ may reject the opinion of a non-examining doctor by  
15 reference to specific evidence in the medical record. *See Sousa v. Callahan*, 143  
16 F.3d 1240, 1244 (9th Cir. 1998).

17 The ALJ provided specific and legitimate reasons to give the opinions of Dr.  
18 Armstrong and Dr. Clifford partial weight. However, without explanation or any  
19 reason provided, Mr. Sterkel contends that Dr. Clifford's opinion should have been  
20 completely rejected, and that Dr. Armstrong's opinion should be completely

1 rejected as well because he feels the ALJ is acting as a medical expert when stating  
2 that the ALJ believes Dr. Armstrong's opinion reasonably approximates Mr.  
3 Sterkel's psychiatric functioning.

4 As noted above, Mr. Sterkel's disagreement with the weighing of the  
5 evidence does not establish error. It is the ALJ, and not the claimant, who is  
6 responsible for weighing the evidence for probity and credibility. *See Sample*, 694  
7 F.2d 639, 643. When the ALJ presents a reasonable interpretation that is supported  
8 by the evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d  
9 853, 857. The Court "must uphold the ALJ's findings if they are supported by  
10 inferences reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see*  
11 *also Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one  
12 rational interpretation, one of which supports the ALJ's decision, the conclusion  
13 must be upheld").

14 In assigning partial weight to the opinions of Dr. Armstrong and Dr.  
15 Clifford, the ALJ supported the determination with specific and legitimate reasons  
16 supported by substantial evidence in the record. Thus, the Court finds the ALJ did  
17 not err in his consideration of the opinions of Dr. Armstrong and Dr. Clifford.

18 **C. The ALJ properly assessed Mr. Sterkel's residual functional capacity  
19 and did not err at step five of the sequential evaluation process.**

20 Mr. Sterkel argues that his assessed residual functional capacity, and the  
resulting step five finding did not account for all of his limitations. Specifically,

1 Mr. Sterkel contends that the assessed residual functional capacity is incomplete  
2 because it does not include, and is not comprised solely of, the limitations  
3 suggested by Dr. Smith, who is not a treating or examining physician and not a  
4 medically acceptable source. However, the Court has already found no error in the  
5 ALJ's treatment of Dr. Smith's opinion and determined that the ALJ properly  
6 afforded the opinion partial credit. *See supra* at 12-14.

7 Additionally, Mr. Sterkel contends that the RFC findings are erroneous  
8 because the ALJ assessed mental limitations in between those suggested by Dr.  
9 Dowell and Dr. Smith and that are not directly supported by a medical opinion.  
10 Contrary to Mr. Sterkel's contention, the ALJ is not required to base the residual  
11 functional capacity finding wholly or directly on the opinion of a treating or  
12 examining medical doctor, neither of which Dr. Smith would be; it is solely the  
13 ALJ's responsibility to determine a claimant's residual functional capacity. 20  
14 C.F.R. §§ 404.1546(c), 416.946(c); *see also Vertigan v. Halter*, 260 F.3d 1044,  
15 1049 (9th Cir. 2001). An ALJ's consideration of a medical source's opinion is not  
16 inadequate simply because the ALJ does not adopt that opinion in verbatim terms  
17 in the ALJ's residual functional capacity finding. *See Turner v. Comm'r of the Soc.*  
18 *Sec. Admin.*, 613 F.3d 1217, 1222-1223 (9th Cir. 2010); *see also Chapo v. Astrue*,  
19 682 F.3d 1285, 1288 (10th Cir. 2012) ("[T]here is no requirement in the  
20

1 regulations for a direct correspondence between an RFC finding and a specific  
2 medical opinion on the functional capacity in question.”).

3 Importantly, the RFC assessed is supported by substantial evidence in the  
4 record, including the high functioning assessment and global assessment of  
5 functioning rating of 70 opined by Dr. Dowell, the global assessment functioning  
6 of rating of 70 opined by Dr. Clifford, the global assessment of functioning rating  
7 of 50 by Dr. Armstrong directly supporting the RFC assessed by the ALJ, and the  
8 low functioning assessment and global assessment of functioning rating of 35  
9 opined by Dr. Smith. AR 21, 22, 122, 434, 492, 517. Additionally, Mr. Sterkel is  
10 benefited by the ALJ’s psychological functioning assessment between the levels of  
11 functioning assessed by Dr. Dowell and Dr. Smith, because the assessment  
12 includes factoring in the limitations assessed by Dr. Smith, a non-medically  
13 acceptable source, when all three of the medically acceptable source doctors  
14 contradict Dr. Smith’s opinion and assessed fewer limitations and a higher level of  
15 functioning than Dr. Smith.

16 Therefore, the ALJ’s decision is supported by substantial evidence and the  
17 ALJ appropriately constructed Mr. Sterkel’s mental residual functional capacity  
18 and a properly framed hypothetical question was addressed to the vocational  
19 expert. Additionally, the vocational expert identified jobs in the national economy  
20 that exist in significant numbers that match the abilities of Mr. Sterkel, given his

limitations. Thus, the Court finds the ALJ did not err in assessing Mr. Sterkel's residual functional capacity and the ALJ did not fail to identify jobs that Mr. Sterkel could perform despite his functional limitations.

## VIII. Conclusion

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is supported by substantial evidence and is free from legal error.

Accordingly, **IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.
2. Defendant's Motion for Summary Judgment, **ECF No. 14**, is **GRANTED**.
3. **Judgment shall be entered in favor of Defendant** and the file shall be **CLOSED**.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order, forward copies to counsel and **close the file**.

**DATED** this 1st day of June, 2017.

*s/Robert H. Whaley*  
ROBERT H. WHALEY  
Senior United States District Judge